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February 28, 2023

(Filed via ECF)

Hon. Paul G. Gardephe
United States District Judge
Southern District of New York
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

MEMO ENDORSED

The application is denied.

SO ORDERED:

Paul G. Gardephe
Paul G. Gardephe, U.S.D.J.

Date: March 7, 2023

Re: RE: United States v. Vitaly Borker
17 CR 00391 (PGG)
22 CR 273 (JSR)

Dear Judge Gardephe:

As you know we represent the defendant Vitaly Borker pursuant to the Criminal Justice Act in connection with a violation of supervised release proceeding before Your Honor. On February 14, 2023, Mr. Borker pleaded guilty to specification number 2 contained in the Probation Department's February 23, 2022 Violation Report ("the Feb. 23, 2022 Violation Report"). Sentencing before Your Honor is scheduled for May 3, 2023. Specification 2 relates to Mr. Borker's involvement in an alleged wire fraud scheme that is also the basis for a charge against him in a related criminal case, 22 Cr. 273, currently pending before the Honorable Jed S. Rakoff. On January 24, 2023, Mr. Borker pleaded guilty to the wire fraud charge in 22 Cr. 273. Mr. Borker is scheduled to be sentenced by Judge Rakoff on April 21, 2023. In light of the two pending sentencing proceedings for the same underlying conduct to which Mr. Borker has pleaded guilty, we write respectfully to request that both sentencing proceedings be consolidated before Judge Rakoff pursuant to Rule 13(c) of the Rules for the Division of Business Among District Judges, Southern District of New York.¹ We have conferred with counsel for the Government, who takes no position on this request.

In both cases, 17 Cr. 391 and 22 Cr. 273, Mr. Borker has pleaded guilty to the same conduct related to his involvement in the sale of eyeglasses via EyeglassesDepot.com. Additionally, the Sentencing Guidelines calculation in Mr. Borker's plea agreement in 22 Cr. 273 includes an enhancement based on Mr. Borker's interactions with his assigned Probation Officer while on

¹ Rule 13(c) provides that "[a] defendant in a criminal case may move on notice to have all of his or her sentences in this district imposed by a single judge. All such motions shall be noticed for hearing before the judge having the lowest docket number, with courtesy copies to be provided to the judge or judges having the cases with the higher dockets numbers."

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Supervised Release, as well as two criminal history points under U.S.S.G. § 4A1.1(d) because the “instant offense was committed while [Mr. Borker] was under a criminal justice sentence.”

Therefore, for purposes of efficiency, convenience, and conservation of the Court’s and Government’s resources, we respectfully request that Your Honor consolidate both sentencings before Judge Rakoff in 22 Cr. 273.

Respectfully submitted,

/s/ Glen A. Kopp

Glen A. Kopp
Partner

Cc: The Honorable Jed S. Rakoff
AUSA Matthew Weinberg

SO ORDERED:

PAUL G. GARDEPHE
UNITED STATES DISTRICT JUDGE